



News & Views

Property & Liability and Workers' Compensation Programs Continue to Grow!

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VACoRP welcomes the following new members effective July 1, 2007:

- | | |
|----------------------|---------------------------------|
| Charlotte County IDA | Town of St. Paul |
| James City County | Charlotte County Schools |
| Powhatan County | Giles County IDA |
| Pulaski County IDA | New Kent IDA |
| Tazewell County IDA | Rockingham County Schools |
| Town of Independence | Southside Regional PSA |
| Town of Leesburg | Virginia's Heartland RIFA |
| Town of Pulaski | Nelson County Service Authority |

VACoRP now covers 84 counties, 40 county school systems, 5 towns and 106 county-related agencies.

VACoGSIA welcomes the following new members effective July 1, 2007:

- | | |
|--|-----------------------------------|
| Buckingham County | Rockingham County Schools |
| Carroll County PSA | Southside Regional Jail Authority |
| Carroll-Grayson-Galax SWA | Town of Leesburg |
| Frederick County Sanitation Authority | Town of Pulaski |
| James City County | Town of St. Paul |
| James City County Sanitation Authority | York County |
| Northern VA Regional Park Authority | York County Schools |

VACoGSIA now provides workers' compensation coverage to 71 counties, 31 county school systems, 4 towns and 64 county-related agencies.

We would like to thank the entire membership for its continued support.

Can Counties Waive Sovereign Immunity?

Recently VACoRP received an opinion from the Office of the Attorney General regarding whether a local government or political entity can waive sovereign immunity. It is important for our members understand this opinion and the law surrounding sovereign immunity, as it dictates both the entity's exposure and VACoRP's legal ability to pay certain claims.



The counties of Virginia enjoy sovereign immunity from tort liability unless the legislature specifically waives it through legislation. Unlike cities, counties enjoy absolute immunity for all activities unless the actions amount to "gross negligence." Gross negligence is defined as wanton disregard for the safety of others. In practice this is a very difficult standard of proof to meet. To date, there are no written Virginia court cases which have found any acts to rise to the level of gross negligence.

The recent Attorney General's opinion confirm that local governments have no authority to waive their sovereign immunity (See also Mann v Arlington County Board, 199 VA 169, 98 S.E.2d 515(1957). There must be clear legislative intent before such immunity may be waived. Further, since the waiver of sovereign immunity is solely within the province of the General Assembly, a county cannot enter into a contract that accepts liability for tort claims. This includes construction contracts.



The opinion states that a voluntary payment for alleged damages for which the county has immunity is, in effect, a waiver of the immunity. Per Virginia law, such a payment cannot be made by either the county or its insurance provider without specific statutory authority to that effect.

What does it realistically mean to a county if it cannot waive sovereign immunity by voluntary payment of claims regardless of negligence, legal liability or legal obligation? It means that if a claim and/or suit is presented to the county, absence gross negligence, the county and VACoRP must deny the claim and not make voluntary payment. Though it might appear that the county should pay for damages or injuries in circumstances other than gross negligence, doing so violates state law. A VACoRP representative would be happy to further discuss this law and any related topic with any member who has questions.

Report Claims ASAP

One of VACoRP's goals is to provide the best possible service to our members. This includes timely review, investigation and payment of claims. Help us reach our goal by reporting all occurrences in a timely fashion. Claims may be reported either via toll-free fax 877-212-8599 or by logging into www.vacoins.org.

All member contracts issued by VACoRP contain the following language under Section VI, D. General Provisions:



9. In Case of Loss

a. Notice of Loss

The Participant will, as soon as practicable, report in writing to the Fund every loss occurrence, which may give rise to a claim under this Contract.

b. Proof of Loss

A signed and sworn detailed Proof of Loss will be filed with the Fund as soon as practicable.

There are numerous reasons that the contracts contain these claims reporting provisions. First, VACoRP can only investigate a claim after it is received. The longer a claim is not reported, the harder it is for VACoRP to review the loss. Second, late reporting diminishes the chance of mitigating any damages. This includes chances to subrogate and to recover salvage, all of which could affect premiums in the long run. Third, late reporting can lead to inaccurate handling and often to destruction of vital evidence. This can result in denial of a claim that might have been covered if reported in a timely fashion. Finally, employees come and go. The longer a claim sits before it is reported, the more likely key testimony will not be available when needed.

In order to ensure excellent service and coverage, please make sure that all claims are reported to VACoRP right away. Timely reporting is essential for VACoRP to serve its members in the best possible fashion. Should any member have questions, comments or concerns regarding claims reporting duties or procedures under the contracts, please feel free to contact a VACoRP representative.



Environmental Liability Coverage

VACoRP strives to be innovative and to provide its members the most comprehensive coverage program at the best possible price. VACoRP provides pollution coverage for third party liability to all pool members at no additional cost. Coverage highlights include \$1 million limit per incident, \$1 million aggregate with a \$25,000 deductible per incident. The coverage limit applies to the pool and its members as one entity.

Covered operations include transfer stations, water treatment facilities, golf courses, pesticide/herbicide applications, etc. Excluded operations include underground storage tanks, airports, landfills and any site known to be previously contaminated. The excluded operations may be covered separately at an additional cost.

Coverage is provided on a "claims made" policy. Under the policy, pollution incidents must be discovered no later than seven (7) calendar days after commencement and reported to the carrier in writing no later than ten (10) business days after its discovery. For additional information, please contact a VACoRP representative.



Top 10 Most Frequently Cited OSHA Standards

The 10 most frequently cited OSHA standards from October 2005 through September 2006 are listed below, along with the specific standard and helpful topics webpage.



Are your employees exposed to hazards from these activities?

1. Scaffolding, general requirements, construction (29 CFR 1926.451) www.osha.gov/SLTC/scaffolding/recognition.html
2. Fall protection, construction (29 CFR 1926.501) www.osha.gov/SLTC/fallprotection/
3. Hazard communication standard, general industry (29 CFR 1910.1200) www.osha.gov/SLTC/hazardcommunications/index.html
4. Respiratory protection, general industry (29 CFR 1910.134) www.osha.gov/SLTC/respiratoryprotection/index.html
5. Control of hazardous energy (lockout/tagout), general industry (29 CFR 1910.147) www.osha.gov/SLTC/controlhazardousenergy/index.html
6. Powered industrial trucks, general industry (29 CFR 1910.178) www.osha.gov/SLTC/powerindustrialtrucks/index.html
7. Electrical, wiring methods, components and equipment, general industry (29 CFR 1910.305) www.osha.gov/SLTC/electrical/standards.html
8. Machines, general requirements, general industry (29 CFR 1910.212) www.osha.gov/SLTC/machineguarding/index.html
9. Ladders, construction (29 CFR 1926.1053) www.osha.gov/SLTC/etools/construction/falls/4ladders.html
10. Electrical systems design, general requirements, general industry (29 CFR 1910.303) www.osha.gov/SLTC/electrical/standards.html



Please contact Risk Control Services if you have any concerns or questions about how these OSHA standards may impact your organization.



The Importance of Prompt Lawsuit Notification

On any given day it is possible that a county or county-related entity will be served with a lawsuit. From transporting citizens, making zoning decisions and providing public safety to operating public parks, supplying water and supervising Virginia's youth, public entities must make decisions and perform services that might ultimately either upset individuals or unintentionally cause damage or injury. When such events occur, certain citizens might choose the courts as a way of righting what they view as a wrong. As a member's coverage provider, it is important for VACoRP to be informed as soon as possible that a lawsuit has been filed.



Often, lawsuits come as a result of a member's already-filed claim for loss; in turn, these court actions are not necessarily unexpected. But until or unless VACoRP is notified by the member, the Pool is unable to respond. This is unfortunate, since most lawsuits require a response within 20 days. Defendants in a suit who do not respond within the allotted time are found to be in default and are unable to argue liability. Effectively, this leaves VACoRP no legal ground on which to defend the member's position.

Most lawsuits are multi-faceted and require detailed review by defendant representatives to determine how and under what conditions a response must be made. Members who hold on to the suit, intentionally or accidentally, without providing VACoRP with a copy immediately risk preventing an accurate response to the court. Whenever a response to the court is rushed, details can be overlooked, exposing the defendant to greater liability. As a result of this liability, a member, and ultimately VACoRP, could be more financially responsible than it otherwise would be.

Research is the name of the game when it comes to any lawsuit. VACoRP attorneys, claims representatives, member services personnel and the member that has been served collaboratively collect information to determine the correct course of action. Once the determination has been made that the filed suit is valid and that VACoRP can legally and contractually apply a defense on behalf of the member, an appropriate response is sent to the court outlining the defense's position.



Members are encouraged to freely speak with VACoRP and its legal representation and are requested to provide accurate information throughout the lawsuit's life-span. Attorneys hired by the Pool on behalf of the member are chosen for their skill and knowledge. VACoRP requests that members extend full cooperation to the legal counsel assigned to the suit as they are dedicated to providing a positive outcome for that member and the Pool.

Timing is everything. Notifying VACoRP as soon as possible upon the receipt of a lawsuit grants the member its greatest chance at an effective response and strong defense. Members should feel free to contact VACoRP at any time regarding the procedures that are in place regarding legal action. As with lawsuit response, good, timely communication is vital to ensure that everything is being done to best serve the member.

Risk Management Tips and Insights



School Bus Crashes and Law Enforcement

VACoRP strongly recommends for all school bus incidents that occur on public roadways to be investigated by law enforcement. This is true for activity buses as well as traditional morning and afternoon bus trips. Obtaining a report for all incidents will enable the school system to have a legal account of the facts. Officer documentation would be used to protect the school from liability where none is present, and it would help support additional training or accountability for the driver involved. Currently, state-mandated training for all bus drivers directs drivers to contact law enforcement and supervisors while at the scene of the incident. If it is not already, such procedures should be defined in each school system.

Website Additions



Purchased a vehicle? Added a new computer system or other equipment that should be listed on the Inland Marine schedule? Don't have time to call VACoRP to list the items? Relax. VACoRP's website permits members to add or delete vehicles, equipment and property at anytime. The information submitted online is sent directly to Member Services. Once the information is received and the listed items added to the member's policy, VACoRP will send an email response that states the request has been completed. In addition, VACoRP's website also allows members to request certificates of insurance. These online processes are quick and easy. The time saved and the email confirmation service benefit both the members and VACoRP. Give it a try with one or two items at first; once members get accustomed to the process, they are sure to enjoy the benefits of such a system. Login at www.vacoins.org.

K-9's and Coverage



Over time, more Sheriff's Offices are acquiring K-9's to help law enforcement personnel. VACoRP feels it is important to let members know that liability for any damages or injuries caused by a K-9 is not covered under the member contract. In terms of protecting the animal itself, members must list the K-9 under the Inland Marine schedule; and then, VACoRP covers only perils (e.g. lightning, fire, struck by car, etc.). Wounds suffered in the line of duty (e.g. gunshot, falling from a height, stabbing, etc.) do not fall in this category. VACoRP recommends that counties cover their K-9's through a Mortality Policy. While VACoRP doesn't offer this coverage, we work with an insurer that does. An application for the policy is available through Member Services. A representative would be happy to discuss the details of K-9 coverage should a member have any questions.

School Bus Coverage Transfer

Ordinarily in Virginia, coverage follows the vehicle, and liability for its use falls under the vehicle's owner's policy. However, the Code of Virginia, Chapter 12, Part 22.1-182 permits governmental agencies to use school buses and assume the liability for their use. This is the only circumstance under which VACoRP recommends that outside governmental agencies use member owned school buses. A member school that wishes to allow a governmental agency to operate one of its school buses should enter into a written agreement that outlines the law and dictates the specific requirements of each party. A sample contract is available from Risk Control. This one-page agreement is in electronic format and may be modified to fit the needs of the parties involved.



Law Enforcement and Safety Belts

Clearly, evidence produced over the past several years both nationally and in this publication point to the undeniable safety benefits arising from seat belt use. Every state has some sort of law that requires drivers and passengers to buckle up. However, most states, including Virginia, provide for law enforcement exceptions. Generally, law enforcement officers are exempt from wearing safety belts while they are on duty. Unfortunately, officers are not exempt from gravitational forces that affect all other drivers and passengers; consequently, unbelted officers are just as likely as unbelted civilians to be seriously injured or killed in a similar crash.

Virginia Code Section 46.2-1094 states that law enforcement officers are permitted to operate motor vehicles, under certain circumstances, without wearing safety belts. However, the intent of the law clearly has been subjected to a broad interpretation. 46.2-1094 states the following:



§ 46.2-1094. Occupants of front seats of motor vehicles required to use safety lap belts and shoulder harnesses; penalty.

B. This section shall not apply to:

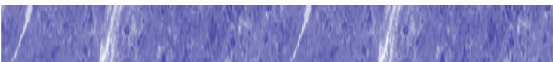
2. Any law-enforcement officer transporting persons in custody or traveling in circumstances which render the wearing of such safety belt system impractical;

County and municipal agencies across the Commonwealth have used the above code to justify not requiring officers to wear safety belts. Certainly there are circumstances under which officers should release belts prior to coming to a complete stop, for example: 1, approaching an address from which an emergency call has originated; 2, pulling up behind a citizen who has been stopped for a traffic violation; and 3, arriving at a scene where a crime is visually in progress. Doubtless, there are an innumerable number of other scenarios that officers could justify for this cause. Unfortunately, using the above code to justify freely operating cruisers under normal conditions and during pursuits without seat belts appears to be misguided.



The most underrated exposure officers face is injury through vehicle operation. While acute hazards of the profession do exist, the chronic exposure of vehicle operation demands that officers incorporate seat belts into daily use. The severe injury or loss of an officer is difficult to accept. But when the injuries or loss could have been prevented through a simple left-to-right motion, it is even more devastating.

VACoRP strongly recommends that our participating law enforcement agencies establish a written seat belt policy in order to protect staff. Members of loss control would be happy to discuss such a policy with our law enforcement executives. Please let us know what we can do to help.



VACo Risk Management Programs

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Fax: (540) 345-5330

Web: www.vacoins.org

Please notify us of name and address corrections.
Feel free to pass this to interested parties.



VACo Risk Management Programs

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Wanda Wingo, Botetourt County
James Campbell, VACo, *Ex-officio*

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